MOTION FILED
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No. 98-864

IN THE

Supreme Court of the United States

OCTOBER TERM, 1998

ESTOCK CORPORATION, N.V., and LOUIS A. MOVITZ, as Trustee,

Petitioners,

v.

FIRST NATIONAL BANK OF CHICAGO,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

MOTION FOR LEAVE TO FILE A BRIEF AS *AMICUS CURIAE* AND BRIEF OF *AMICUS CURIAE* ILLINOIS TRIAL LAWYERS ASSOCIATION IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI

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MOTION FOR LEAVE TO FILE *AMICUS CURIAE* BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

Pursuant to Rule 37.2(b), the Illinois Trial Lawyers Association ("Association") respectfully requests leave to file the following *amicus curiae* brief in support of the Petition for Certiorari herein. Petitioners have consented to the filing of the *amicus curiae* brief, but respondent First National Bank of Chicago refuses to consent.

The Association is comprised of more than 2,000 Illinois trial lawyers, most of whom confine their practice to representing people injured and killed by wrongful conduct. The membership actively practices in the state and federal courts of Illinois, and has a particular interest in what is perceived as the diminished importance of jury verdicts in the 7th Circuit, evidenced by the very high rate of reversals in jury cases in the Circuit (cf. Petition for Writ of Certiorari, p.10, n. 7). Seventh Amendment issues are of vital importance to the membership of the Association, and it respectfully asks that this Honorable Court consider this brief in support of the Petition for Writ of Certiorari.

Respectfully submitted,

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TABLE OF CONTENTS

PAGE

TABLE OF AUTHORITIES ii

BRIEF OF *AMICUS CURIAE* ILLINOIS TRIAL LAWYERS ASSOCIATION IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI 1

CONCLUSION 3

TABLE OF AUTHORITIES

CASES PAGE

Edmonson v. Leesville Concrete Co., 500 U.S. 614 (1991) 1

Gasperini v. Center for Humanities, Inc., 518 U.S. 415 (1996) 2

Parklane Hosiery Co. v. Shore, 439 U.S. 322 (1979) 2

CONSTITUTION, STATUTES, AND RULES

U.S. CONST., Amend. VII 1

Supreme Court Rule 37.6 1

F.R. Civ. P. Rule 49 2

BRIEF OF *AMICUS CURIAE* ILLINOIS TRIAL LAWYERS ASSOCIATION IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI[1]

The Association is uncompromisingly committed to the right to trial by jury in civil cases. The 7th Circuit's opinion in this case eviscerates the Seventh Amendment principle that:

> . . . no fact tried by a jury, shall be otherwise reexamined in any Court of the United States, than according to the rules of the common law.

U.S. CONST., Amend. VII.

A fundamental feature of trial by jury under the Seventh Amendment is that juries decide the questions of fact. *Edmonson v. Leesville Concrete Co.*, 500 U.S. 614, 625 (1991) ("Should either party to a cause invoke its Seventh Amendment right, the jury becomes the principal fact finder, charged with weighing the evidence, judging the credibility of witnesses, and reaching a verdict."). Thus, and most importantly, "[t]he jury's factual determinations as a general rule are final." *Id.* The Court of Appeals ignored that rule here. Unless corrected, its decision will undermine the right to trial by jury in the 7th Circuit Court of Appeals.

Under a general verdict, such as in this case, the jury reports only its ultimate finding of the liability of the

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[1] Pursuant to Rule 37.6, the Association states that this brief was not authored in whole or in part by counsel for any party, and no monetary contribution was made to the preparation or submission of the brief by anyone other than the Association and its members.

parties rather than any recitation of evidentiary fact. The inherent uncertainty in the general verdict is a recognized drawback in the process, but one that is outweighed by the value of entrusting lay juries with the key role in the administration of justice. *See* comments of Justice Scalia, the "Seventh Amendment's prohibition on appellate reexamination of civil jury awards" has long been regarded "as a core component of the Bill of Rights," *Gasperini v. Center for Humanities, Inc.*, 518 U.S. 415, 469 (1996), and Justice Rehnquist's words in *Parklane Hosiery Co. v. Shore*, 439 U.S. 322, 343 (1979), "[t]he founders of our Nation considered the right of trial by jury in civil cases an important bulwark against tyranny and corruption a safeguard too precious to be left to the whim of the sovereign, or, it might be added, to that of the judiciary."

The issues presented in the trial court's jury instructions give an important window into the jury's fact-finding. In the case at bar, while a general verdict was rendered,[2] the Court of Appeals' recitation of the facts of the case makes no reference to the issues that were framed by the jury instructions. This omission makes it clear that the Court never determined what evidence was necessarily found to be true by the jury, and therefore, the Court never deferred to the jury's factual findings. The materiality of this failure to focus on the jury charge is readily apparent in the Court's misperception of the nature and cause of Estock Corporation's loss. A review of the charge makes plain that the jury consid-

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[2] No special verdict and no special interrogatories were tendered by the defense. *F.R.C.P. 49.*

ered and rejected the defense claim that the losses were caused by the depression in the Houston real estate market.

To have reached its verdict, the jury necessary found that plaintiff was not "wiped out" by the weakness in the Houston economy as asserted by the opinion of the Court of Appeals. The award compensated for plaintiff's losses proximately caused by defendant's conduct, independent of the market downturn. The jury had the opportunity, based on the instructions, to find that plaintiff's losses were caused by the market factors, but expressly rejected that evidence in its verdict for the plaintiff.

The Court of Appeals should not have substituted its fact finding for that of the jury that heard all of the evidence and had the first-hand opportunity to appreciate the credibility of the witnesses. To unilaterally disregard the jury's findings of fact in this case, as the Court of Appeals did, renders the right to trial by jury impotent.

CONCLUSION

For the foregoing reasons, the Association supports petitioners in requesting that this Court grant the petition for a writ of certiorari and summarily reverse the decision of the court below.

Dated: December 21, 1998.

Respectfully submitted,

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